

## Commodity Futures Trading Commission

## § 147.3

(c) *Commissioner* means a member of the Commodity Futures Trading Commission duly appointed as a Commissioner in accordance with section 2(a)(2) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(a);

(d) *Meeting* means the deliberations of a quorum of Commissioners that determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by §147.4, §147.5 or §147.6;

(e) *Person* includes an individual, partnership, corporation, association, exchange or other entity or organization;

(f) *Quorum* means at least the minimum number of Commissioners required to take action on behalf of the Commission;

(g) The term *FOI, Privacy and Sunshine Acts compliance staff* refers to the staff in the Office of the Secretariat in the Commission's principal office in Washington, DC who are assigned to respond to requests and handle various other matters under the Freedom of Information Act, the Privacy Act of 1974 and the Government in the Sunshine Act.

[42 FR 13704, Mar. 11, 1977, as amended at 45 FR 26955, Apr. 22, 1980]

### **§ 147.3 General requirement of open meetings; grounds upon which meetings may be closed.**

(a) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with the rules of this part, and meetings shall not be held in places which restrict membership or attendance or otherwise discriminate on the basis of race, color, creed, national origin, ancestry, religion or sex. Except as provided in paragraph (b) of this section, every portion of every meeting of the Commission shall be open to public observation.

(b) Except where the Commission finds that the public interest requires otherwise, meetings or portions of meetings shall not be open to public observation, and the requirements of §§147.4, 147.5 and 147.6 shall not apply to any information pertaining to such meetings or portions of meetings otherwise required by the rules of this part to be publicly disclosed, where the

Commission determines that such meetings or portions of meetings or the disclosure of such information is likely to:

(1) Disclose matters that (i) are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (ii) are in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and personnel practices of the Commission or any other agency of the Government of the United States, including, but not limited to, operational rules, guidelines, and manuals of procedure for investigators, auditors, and other employees (other than those rules and practices which establish legal requirements to which members of the public are expected to conform);

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, as amended, 5 U.S.C. 552), provided that such statute (i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld. This includes, but is not limited to, data and information which would separately disclose the business transactions or market positions of any person and trade secrets or names of customers and data and information concerning or obtained in connection with any pending investigation of any person;

(4)(i) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential including, but not limited to:

(A) Reports of stocks of grain, such as Forms 38, 38C, 38M and 38T, required to be filed pursuant to 17 CFR 1.44;

(B) Statements of reporting traders on Form 40 required to be filed pursuant to 17 CFR 18.04;

(C) Statements concerning special calls on positions required to be filed pursuant to 17 CFR part 21;

(D) Statements concerning identification of special accounts on Form

102 required to be filed pursuant to 17 CFR 17.01;

(E) Reports required to be filed pursuant to parts 15 through 21 of this chapter;

(F) Reports concerning option positions of large traders required to be filed pursuant to part 16 of this chapter;

(G) Form 188; and

(H) The following reports and statements that are also set forth in paragraph (b)(8) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1–FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1–FR pursuant to 17 CFR 1.10(h); Forms 2–FR required to be filed pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 17 CFR 1.16(c)(5); all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); the following portions of Form CPO–PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and (d); Question 3, subparts (g) and (h); Question 9; Question 10, subparts (b), (c), (d), (e), and (g); Question 11; and Question 12; and Schedules B and C; and the following portions of Form CTA–PR required to be filed pursuant to 17 CFR 4.27: Question 2, subparts (c) and (d);

(ii) Information contained in reports, summaries, analyses, transcripts, letters or memoranda arising out of, in anticipation of or in connection with an examination or inspection of the books and records of any person or any other formal or informal inquiry or investigation; and

(iii) Information for which confidential treatment has been requested and granted in accordance with 17 CFR 145.9;

(5) Involve accusing any person of a crime, or formally censuring any person, including but not limited to:

(i) Requests by the Commission that the Attorney General of the United States institute a criminal action against any person believed to have violated any provision of the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*, or any rule, regulation or order thereunder;

(ii) The consideration of any administrative proceeding instituted or to be instituted by the Commission against any person for a violation of the Commodity Exchange Act, as amended, 7 U.S.C. 1, *et seq.*, or any rule, regulation or order thereunder;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy, including, but not limited to, information of that character contained in:

(i) Files concerning employees of the Commission;

(ii) Files concerning persons subject to regulation by the Commission, including files with respect to applications for registration and biographical supplements submitted with such applications. Examples of the information on the applications and biographical supplements which may be protected are an individual's home address and telephone number, social security number, date and place of birth, fingerprints and, in appropriate cases, the information concerning prior arrests, indictments, criminal convictions or other judgments or sanctions imposed by State or Federal courts or regulatory authorities; and

(iii) Files containing information for which confidential treatment has been requested and granted in accordance with 17 CFR 145.9;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, to the extent that production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel. Investigatory records and information include all documents, records, transcripts, correspondence and related memoranda and work-product concerning examinations and other inquiries or investigations and related litigation as authorized by law, which pertain to or may disclose the possible

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violations by any person of any provision of law, including the Commodity Exchange Act, as amended, or of any rule or regulation adopted by the Commission or which pertain to the qualifications of any person registered or seeking registration under that Act or of any person affiliated with such person; and all written communications from or to any person who has confidentially complained or otherwise furnished information respecting such possible violations, as well as all correspondence and memoranda in connection with such confidential complaints or information;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Commission or any other agency responsible for the regulation or supervision of financial institutions, including, but not limited to the following reports and statements that are also set forth in paragraph (b)(4)(i)(H) of this section, except as specified in 17 CFR 1.10(g)(2) or 17 CFR 31.13(m): Forms 1-FR required to be filed pursuant to 17 CFR 1.10; FOCUS reports that are filed in lieu of Forms 1-FR pursuant to 17 CFR 1.10(h); Forms 2-FR pursuant to 17 CFR 31.13; the accountant's report on material inadequacies filed in accordance with 1.16(c)(5); and all reports and statements required to be filed pursuant to 17 CFR 1.17(c)(6); and

(i) The following portions of Form CPO-PQR required to be filed pursuant to 17 CFR 4.27: Schedule A: Question 2, subparts (b) and D; Question 3, subparts (g) and (h); Question 10, subparts (b), (c), (d), (e), and (g); Question 11; Question 12; and Question 13; and Schedules B and C; and

(ii) The following portions of Form CTA-PR required to be filed pursuant to 17 CFR 4.27: Schedule B: Question 4, subparts (b), (c), (d), and (e); Question 5; and Question 6;

(9) Disclose information the premature disclosure of which would be likely to (i) lead to significant financial speculation in currencies, securities, or commodities, (ii) significantly endanger the stability of any financial institution, or (iii) frustrate significantly the implementation of a proposed Commission action, except where

the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena, or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Commission of a particular case of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(5 U.S.C. 552, 5 U.S.C. 552b, and secs. 2(a)(11), 4b, 4f, 4g, 5a, 8a, and 17 of the Commodity Exchange Act, 7 U.S.C. 2, 4a(j), 6b, 6f, 6g, 7a, 12a, and 21, as amended, 92 Stat. 865 *et seq.*; secs. 2(a)(1), 4c(a)-(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)-(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b); secs. 2(a)(11) and 8, 7 U.S.C. 4a(j) and 12 (1983); secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982); 5 U.S.C. 552 and 552b)

[42 FR 13704, Mar. 11, 1977, as amended at 42 FR 42851, Aug. 25, 1977; 44 FR 13458, Mar. 12, 1979; 45 FR 2023, Jan. 10, 1980; 46 FR 24943, May 4, 1981; 46 FR 54534, Nov. 3, 1981; 48 FR 35303, Aug. 3, 1983; 49 FR 4465, Feb. 7, 1984; 49 FR 5541, Feb. 13, 1984; 53 FR 4613, Feb. 17, 1988; 54 FR 41084, Oct. 5, 1989; 62 FR 4642, Jan. 31, 1997; 64 FR 27, Jan. 4, 1999; 71 FR 5595, Feb. 2, 2006; 75 FR 55450, Sept. 10, 2010; 77 FR 11342, Feb. 24, 2012]

### § 147.4 Procedure for announcing meetings.

(a) Advance notice of all meetings of the Commission shall be provided to the public. In the case of each meeting, except as provided in paragraph (b) of this section and in § 147.6, the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of § 147.3(b), make a public announcement, at least one week before the date of the meeting of the time, place and subject matter of the meeting and which portions of the meeting shall be open or closed to the public, and shall indicate an official of the Commission who may be contacted at a designated telephone